

REMARKS

Telephone Interviews

Applicant's undersigned Counsel had three telephone interviews with the Examiner, on May 5, 8 and 13, 2008. Applicant appreciates the Examiner's attention to this application and his helpful explanations regarding claims (as discussed below).

On May 5, Counsel advised that the amendment of the specification page 8, in the Notice of Allowability at pages 3-4, was incorrect, and that there were typographical or other minor errors in claims 117, 131 and 134. The Examiner agreed and said he would take steps to delete the specification amendment and correct the errors in the claims.

On May 8, 2008, Counsel asked the Examiner what were the reasons for canceling claims 128 and 136 in the Notice of Allowability. The Examiner said that claim 128 was cancelled because it recited "the grape seed extract" and was dependent from claims 104 or 105, but claim 104 had no antecedent basis for "the grape seed extract", which rendered claim 128 indefinite. The Examiner, Dr. Srivastava, suggested that if Applicant wishes to introduce a new claim, equivalent to claim 128, but free of the aforementioned deficiency, such new claim can depend only from claim 105 and would have to be submitted in an Amendment Under 37 CFR 1.312 (the "312 Amendment"). Dr. Srivastava pointed out that claims 140-144 provide a similar scope of protection as claim 128, but of a broader scope, i.e., they recite the ratio of a "polyphenolic, hydrophilic antioxidant to lycopene" instead of the ratio "grape seed extract to lycopene". The Examiner also advised that a brief description of the drawings needed to be added to the specification in the '312 Amendment.

The Examiner advised that claim 136 was cancelled because it was very similar to claim 104, but somewhat narrower due to the transitional phrase "consisting essentially of" instead of "comprising" in claim 104. Dr. Srivastava advised that a new claim of the same scope as claim 136 could be introduced in the '312 Amendment that Applicants would file.

On May 13, Counsel acknowledged the receipt of the May 13, 2008 Interview Summary issued by Dr. Srivastava. Counsel pointed out that the Interview Summary did not refer to the deletion of the specification amendment and claims' correction discussed during the May 5th interview. Counsel offered to make these amendments in the '312 Amendment that Applicants would need to file at least to add the brief description of the drawings. Dr. Srivastava agreed.

The Examiner advised that he would have to seek approval for entry of such amendments from a patentability conference, but he believed that the patentability conference would authorize him to enter the amendments.

Specification Amendments

Applicant amended specification at page 2, to add a Brief Description of the Drawings, support therefor being found in the specification considered as a whole, e.g., at page 11, lines 21-25, page 12, lines 13-20, page 15, lines 22-27, page 18, lines 20-237 and page 21, line 20- page 22, line 22. Applicant also deleted the amendment at page 8 of the specification. No new matter is introduced by these amendments.

Claim Amendments

Applicant amended claims 104, 117, 131, 140-149 and added new claims 150-151. Support for the claim amendments is found in the application, considered as a whole, e.g., at page 8, lines 7-11, and in claim 104 prior its amendment herein. In particular, claim 104 prior to this amendment recited, in pertinent part, "...ii) at least one polyphenolic, hydrophilic antioxidant found in grape seed; or synthetic form of at least one polyphenolic hydrophilic antioxidant and esters thereof..."

The specification stated that the hydrophilic antioxidants may be from “natural or synthetic sources” (page 7, lines 28-29), and that such antioxidants may be selected from the group consisting of polyphenols and esters thereof (page 8, lines 7-8).

Thus, a person of ordinary skill in the art would readily understand that Applicant contemplated, when the application was filed, natural and synthetic polyphenolic hydrophilic antioxidants or esters thereof.¹ The term “esters thereof” is applicable to both natural and synthetic hydrophilic antioxidants. Claim 104, contained the recitation “or esters thereof” in line 8. The amendment of that claim to include “or esters thereof” for consistency in line 7 does not introduce new issues. Similarly, the amendment of allowed claims 140-149, dependent from claim 104, to add “or esters thereof” for consistency with claim 104 also does not introduce new issues.

For all the reasons set forth above, Applicant respectfully requests entry of this amendment and re-iteration of allowability of claims 104-106, 108-115, 117, 120-127, 129-135, 137-151.

New claims 150 and 151 are also supported by the application, considered as a whole, e.g., the previously presented claims 128 and 136 and page 8, lines 7-11. No new matter or new issues are introduced by these claim amendments.

In view of the interviews and due to the absence of new issues in the amended and new claims, entry of all amendments into the record is respectfully requested.

Applicant notes the Examiner’s comments in the Interview Summary that claim 142 covers the same subject matter as the cancelled claim 128. Applicant respectfully points out that there is a difference in scope between these claims, i.e., claim 128 covered a ratio of the grape seed extract to lycopene, while claim 142 covers a ratio of at least one polyphenolic, hydrophilic antioxidant to lycopene. New claim 150 corresponds to the cancelled claim 128, except it depends only from claim 105. Thus, there are no antecedent basis issues in claim 150 and it is in condition for allowance.

¹ It is well established that “antioxidants selected from the group consisting of polyphenols and esters thereof” is equivalent to “antioxidants which are polyphenols or esters thereof” e.g. see MPEP, section 2173.05 (h).

Applicant also appreciates the Examiner's explanation of the difference in scope between claims 104 and 136. See Continuation Sheet of Interview Summary. Applicant desires to have patent protection of the varying scope provided by claims 104 and 151, corresponding to the cancelled claim 136. Since the broader claim 104 was allowed and it is undisputed that claim 151 has a narrower scope than claim 104, claim 151 is also in condition for allowance.

Conclusion

Applicant respectfully submits that all claims continue to be allowable. An indication of entry of the above amendments is respectfully solicited.

In the event that any outstanding issues remain, Applicant respectfully requests the courtesy of a telephone call to the undersigned Counsel to resolve such issues in an expeditious manner so that the issuance of the application into a patent will proceed unimpeded.

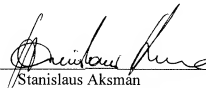
In the event that any variance exists between the fees enclosed herewith and those deemed necessary by the U.S. Patent and Trademark Office to enter and consider this Amendment, or to maintain the present application pending, please credit or charge such variance to the undersigned deposit account number 50-2478.

Respectfully submitted,

Date:

May 30, 2008

By:


Stanislaus Aksman
Registration No. 28,562